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## Editorial In the aftermath of mass violence

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In the aftermath of mass violence, the examination of death scenes appears as a high priority for investigators, be they judges of national or international tribunals, representatives of victims' organisations or NGOs. This may also involve a search for the victims – a search that seems, however, to stem from humanitarian relief rather than from a clearly binding legal obligation. The obligation to search for the dead is only to be found in international humanitarian law, and non-compliance with it is neither a grave breach nor a war crime. If the law remains silent, questions concerning which state can exercise jurisdiction, how and by whom investigations are conducted, how investigating teams are selected, how their role and mandate are ascribed, and how their skills and cultural sensitivity are assessed, remain very much decided on an *ad hoc* basis, depending on diplomatic, consensual, financial and even emotional grounds. The risk of arbitrariness resulting from current practice is thus extremely high.

Once found, corpses of victims require protection – a protection that is largely ignored by international law. International humanitarian law imposes on belligerents an obligation to respect human remains and gravesites, which seems to prohibit the use of mass graves and, in international conflicts, includes an obligation 'to facilitate the return of the remains'. Respect for these rules remains illusory. Individualised and accessible gravesites are rare in times of armed conflict, and even more so in cases of mass atrocities as the destruction of corpses and mass graves is frequently used by perpetrators to impede criminal investigations. Similarly, non-compliance is neither a grave breach nor a war crime. Under the Rome Statute of the International Criminal Court (ICC), the only act against the dead which may be considered as such is that of 'committing outrages upon personal dignity', which 'can include dead persons'. The brevity of the law notwithstanding, the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) have – cautiously – criminalised acts perpetrated against the dead and the use of mass graves. This judicial activism – albeit prudent – is also found in the extensive interpretation of human rights law by the European Court of Human Rights which recently affirmed the obligation to respect the deceased in the context of organ removal.

What seems more tangible is the reliance on forensic evidence by international

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criminal tribunals and courts to prove individual criminal responsibility in the context of mass atrocities. Yet, this reliance could admittedly be increased as the fate reserved for the corpses of victims of mass violence is more often than not symptomatic of the perpetrators' ideology. This is well illustrated by Sidi N'Diaye through the parallel drawn in his contribution between the treatment of corpses during the Rwandan genocide and that during the Holocaust in Poland. Adequately analysing the fate of human remains in the aftermath of mass violence would not only better contribute to detailing the criminal *modus operandi*; it would also put a halt to certain myths that have emerged. Joachim Neander tells of the strange stories of memorials over 'soap' wrongly considered as being made out of the human flesh of Jews murdered during the Shoah. As he explains, this imaginative assumption that soap was produced from Jewish corpses has generated numerous funeral ceremonies supporting this myth.

Shifting the focus to issues of investigating graves and identifying victims, Komang Ralebitso-Senior, Tim Thompson and Helen Carney explore very recent methods for investigating clandestine gravesites, using microbial ecogenomics. These methods go beyond DNA analysis and may prove revolutionary in the search for, and investigation of, mass graves in post- mass violence contexts. For their part, Ernesto Schwartz-Marin and Arely Cruz-Santiago elaborate on what they call 'forensic civism', that is, the role of victims' families in the search for, and identification of, victims of murderous regimes. Their comparative study of Mexico and Columbia notably puts in the limelight the new power play surrounding the corpses of the victims. Finally, moving to Bosnia-Herzegovina, Andrea Szkil describes and explains the professional identities of forensic scientists working for the International Commission on Missing Persons (ICMP).

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